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IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR.

Misc. Petition No. 5104 of 1989

PETITIONER - Girish Chandra Trivedi, son of B.P. Trivedi, aged about 34 year, r/o care of Shri Madan Dubey, High School Road, Jagdalpur.

versus

RESPONDENTS - 1. Bastar Kshetriya Gramin Bank through its Chairman, Jagdalpur, District Bastar, M.P.

2. Board of Directors through the Chairman, Bastar Kshetriya Gramin Bank, Jagdalpur, Bastar, M.P.

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M.S. Kale

Advocate

R. & D.R.

D 4.5.94

PETITION UNDER ARTICLES 226 R/W ARTICLE 227 OF THE CONSTITUTION OF INDIA.

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(296)

HIGH COURT OF CHHATTISGARH AT BILASPUR

W.P. No. 5104 of 1989

Petitioner — Girish Chandra Trivedi

Versus

Respondents — Bastar Kshetriya Gramin Bank & another

Post for order on 9th March, 2006.

Sd/-
Satish K. Agnihotri
Judge

HIGH COURT OF CHHATTISGARH AT BILASPUR

(297)

W.P. No. 5104 of 1989

Petitioner — Girish Chandra Trivedi

Versus

Respondents — Bastar Kshetriya Gramin Bank & another

Single Bench: Hon'ble Mr. Justice **Satish K. Agnihotri**.

Shri N. S. Kale, Senior Advocate with Shri Abhishek Sinha, Advocate for the petitioner.

Shri Prafull Bharat, Advocate for the Respondents.

O R D E R

(March, 2006)

The following order of the Court was passed by **Satish K. Agnihotri, J.**

1. The Bastar Kshetriya Gramin Bank (for short 'the Bank') is a joint venture of the Central Government and State Government and affiliated by the State Bank of India. The petitioner was employed by the respondent-Bank as Branch Manager on 22.6.1981 and posted at Sambalpur Branch. The petitioner was subsequently transferred to Sonarpal Branch in the same official capacity in Tahsil and District- Jagdalpur(Baster). It is alleged that during his tenure as Branch Manager at Branch Sambhalpur as well as at Sonarpal, the petitioner has committed several grave irregularities and misused his official capacity, so as to cause loss to the respondent-Bank.

2. The petitioner was issued a show cause notice on 21.9.1985 (Annexure A) relating to his posting at Sambhalpur Branch with regard to the irregularities committed by him, which are as under:-

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a) The petitioner advanced loan to 38 persons who were neither residents of the villages mentioned in the documents nor were they ever residing in the villages.

b) Loans advanced to 19 persons were found fictitious as said 19 persons reported in writing that they had never taken any loan from the Bank.

c) The petitioner made an entry of deposit of Rs. 700/- on 07.07.1982 in the pass book of one account holder Dharmu Ram. However, there was no mention of such deposit in the account book of the Bank. Thus, the petitioner has obtained the said amount but did not deposit in the Bank.

d) The petitioner made an entry of deposit of Rs. 100/- in the ledger sheet of the Bank and pass book of Kamlesh Kumar Tiwari on 7/8.9.1983 but it was not mentioned in the daily transaction register and the cashier receipt payment register. Thus, the petitioner, having obtained the said amount failed to deposit in the Bank.

e) The petitioner had withdrawn an amount of Rs. 230/- from his own bank account on 15.10.83 when the actual balance in the said account was Rs. 157.54 and thus an over draft of Rs. 100/- ought to have been shown. To avoid over draft the petitioner made manipulations in the entries by making the figure of Rs. 230/- as Rs. 130/- and replaced the withdrawal voucher by a new one of Rs. 130/- and thus misappropriated an amount of Rs. 100/-, during the period 15.10.1983 to 30.11.1983.

f) The petitioner exceeded his discretionary powers as Branch Manager by granting loans more than his limit for sanction and disburse of the loan amount, thus misused his powers.

3. The petitioner was issued one more charge sheet dated 23.9.1985(Annexure B) for having committed serious

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irregularities during his posting as Branch Manager at Sonarpal Branch to the following effect:-

(a) That on inspection of the Branch, an amount of Rs. 100/- was found short on 10.04.85, which was admitted by the petitioner and to make good the deficit, he submitted withdrawal form of Rs. 100/-, entry which was made in the transaction register and cashier receipt payment register. However, on inspection on 14.4.85, it was found that the entries were altered and instead of the name of the petitioner, the name of one R.K. Gupta was written. Thus, he altered entries and manipulated Bank records in order to make up the deficit.

(b) That on inspection on 17.4.85 a slip was found in the drawer of the petitioner's table containing the names of eight persons for an amount of Rs. 40/-. On enquiry, the petitioner informed that he had received the amount for the purpose of purchasing stamps for borrowers. However, the amount was not deposited in the stamps account. This act of the petitioner amounted to illegally holding the amount with him contrary to the Bank regulations.

(c) That, although loans were granted on 10.4.85 in nine accounts but as on the date of inspection, no documents were got executed from the concerned persons, which fact was admitted by him.

(d) That the Bank records showed disbursement of loans to five persons on 24.1.85 and 25.1.85 but on verification it was found that those persons were not residing in the village mentioned in the records and that they never resided there. Four of these accounts were closed after full and final payment and in one account, the amount was deposited in lump sum. Thus the petitioner

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sanctioned the loans in names of fictitious persons and misappropriated the amount.

4. Accordingly, total 10 charges were levelled against the petitioner. One Shri Gajanan Prasad Pandey was appointed as Enquiry Officer and Shri Meghraj Pathak was appointed as Presenting Officer. The enquiry was concluded on 19.10.1986 and the report was submitted by the enquiry officer on 6.12.1987 to the disciplinary authority. The disciplinary authority vide order dated 23.12.1987 proposed the punishment on the petitioner. The petitioner submitted his reply on 18.3.1988. After considering the reply of the petitioner and having afforded an opportunity of personal hearing to the petitioner, the disciplinary authority passed the final order dated 12.5.1988 (Annexure F) imposing the punishment of dismissal from Banks service as at the close of Business on 12.5.88 without notice which shall be a disqualification for future employment.

5. Thereafter, the petitioner submitted statutory appeal under Section 32 of the Bank Regulations against the order dated 12.5.1988 passed by the disciplinary authority, to the Board of Directors of the Bank. Vide communication dated 21.9.1989 it was informed to the petitioner that the Board of Directors had discussed the points involved in the appeal, in detail in its meeting dated 20.9.1989 and accordingly the appeal was dismissed.

6. The petitioner has averred in the petition that the petitioner has been made a scapegoat with the help of one Shri Namdeo, Branch Manager, Sambalpur and Shri Pawar, Branch Manager,

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Sonarpal at the relevant time by the then Chairman of the Bank Shri R. P. Bose. Shri R. P. Bose had a grudge against the petitioner, who was an active member of the Union. Shri Bose had refused to give recognition to the Union of which the petitioner was the active member. In this connection, several hot-discussions had taken place between the petitioner and Shri R. P. Bose. In the personal hearing also, given to the petitioner on 7.5.1988, Shri R. K. Bose had threatened the petitioner that he would dismiss him from service. A false case has been engineered against the petitioner. The order of dismissal is malafide and arbitrary and is liable to be quashed. The petitioner has also submitted that Shri G. P. Pandey, enquiry officer was junior to the petitioner as the petitioner was confirmed earlier to Shri Pandey, as such Shri Pandey could not have been appointed as enquiry officer in violation of the Staff Regulation 13(3), which provides that in the case of an officer or employee whose probation has been extended, his seniority shall be reckoned just below all the officers or employees, if any, recruited or promoted in the same batch along with him.

7. Learned counsel appearing for the petitioner submitted, additionally, that the petitioner was not permitted to examine certain documents and the same was denied on the ground that the said documents have been seized by the State Economic Crime Investigation Bureau (for short 'Bureau'), and as such, the petitioner was not afforded proper hearing, and the entire proceedings of the Departmental Enquiry was vitiated.

8. Shri Prafull Bharat, learned counsel appearing for the respondents-Bank, in reply submitted that the petitioner has

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admitted irregularities committed by him to the effect that while granting loans to 38 persons he had not visited the spot and had not made the enquiries from the proposed borrowers. The delinquent officer has admitted his guilt and promised not to repeat the same in future. The petitioner has failed to comply with the Banking Rules for grant of loans, making entries in the bank documents, form of withdrawal of money etc. A detailed enquiry was conducted. The petitioner was granted full opportunity by providing inspection of all the documents except one or two documents which were not in possession of the Bank itself, as the same was seized by the Bureau. Learned counsel further submitted that this Court while exercising extraordinary jurisdiction under Article 226/227 of the Constitution of India should not sit as an appellate Court. There is sufficient evidence to establish the charges against the petitioner. In regard to the enquiry of Sambalpur Branch, out of six charges, charge No. 1, 2, 5 and 6 have been proved and remaining charges 3 and 4 have not been found proved by the enquiry officer. In regard to the irregularities committed at Sonarpal Branch, all the charges have been found proved.

9. Learned counsel for the respondents has submitted that it is absolutely incorrect to say that Shri Pandey was junior to the petitioner in the cadre of officers. As provided in para 13 (3) Chapter-III of staff Regulations, it is the seniority assigned at the time of selection which prevails all through in the cadre and not the date of confirmation, and referred to the seniority list (Annexure R/25) wherein Shri Pandey has been placed senior to the petitioner. The petitioner did not raise any objection as to

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the appointment of Shri Pandey before commencement of and during the enquiry also. He is, therefore, estopped from challenging the authority of Shri Pandey to hold enquiry against him. In support of this contention, learned counsel for the respondents relied on the decision of Supreme Court in **Pankajesh Vs. Tulsi Gramin Bank & another** (AIR 1997 SC 2654) wherein in para 6 the Supreme Court held as under:-

> "6. Thus an enquiry, under the Regulation may be delegated to a person higher in rank than the delinquent officer, in the case of an officer. But in this case we do not find any substantial miscarriage of justice prejudicial to the petitioner for the reason that though it is always desirable that an officer higher in rank than the delinquent officer should be directed to conduct an enquiry, the enquiry is conducted as a delegate of the disciplinary authority. Therefore, the ultimate decision is to be taken by the disciplinary authority. By mere delegating the enquiry whether the enquiry officer is of the same cadre or of higher grade than that of the petitioner, it did not cause any material irregularity nor resulted in any injustice to the petitioner. Under these circumstances, we do not find any illegality warranting interference."

10. I have heard Shri N. S. Kale, learned Senior counsel with Shri Abhishek Sinha, learned counsel for the petitioner and Shri Prafull Bharat, learned counsel for the respondent and perused the documents annexed to the petition and the reply filed by the Bank.

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11. The averments made in the petition with regard to the allegations against some officers are ipse-dixit. The averments are vague and unsupported by any document/evidence. This is not a case where findings recorded by the enquiry officer are based on no evidence or on unreliable evidence. The enquiry officer has examined all the aspects in detail. The petitioner was given full opportunity of hearing by producing his case and examining and cross-examining the witnesses and documents produced by the Bank and as such it cannot be held that there was any perversity or infirmity in the enquiry report. The disciplinary authority after having provided second opportunity before imposing punishment after submission of the enquiry report has complied with the principles of natural justice. The petitioner had filed a statutory appeal also before the Board of Directors. The Board of Directors agreed with the findings of the enquiry officer and upheld the punishment imposed by the disciplinary authority.

12. It is not proved that the enquiry officer was junior to the delinquent officer and the officer who is from the same batch can be appointed as enquiry officer.

13. The enquiry report has been upheld by the disciplinary authority as well as by the appellate authority. This Court in exercise of its jurisdiction under Article 226/227 of the Constitution of India should not interfere and re-appreciate the evidence and come to a different conclusion which may also be one of probable conclusions.

14. The Supreme Court in **Govt. of T.N. and others Vs. S. Vel Raj** { (1997) 2 S.C.C. 708 } has held that "the finding recorded by

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the Enquiry Officer and confirmed by the appellate authority were based upon the evidence led during the enquiry and it was not even contended that the said findings were perverse. It was, therefore, not open to the Tribunal to record contrary findings and hold that the charge against the respondent was not proved."

15. The Supreme Court in the case of **Kuldeep Singh Vs. Commissioner of Police and others** { (1999) 2 S.C.C. 10} held as under :-

> "9. Normally the High Court and this Court would not interfere with the findings of fact recorded at the domestic enquiry but if the finding of "guilt" is based on no evidence, it would be perverse finding and would be amenable to judicial scrutiny.
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> 10. A broad distinction has, therefore, to be maintained between the decisions which are perverse and those which are not. If a decision is arrived at on no evidence or evidence which is thoroughly unreliable and no reasonable person would act upon it, the order would be perverse. But if there is some evidence on record which is acceptable and which would be relied upon, howsoever compendious it may be, the conclusions would not be treated as perverse and the findings would not be interfered with".

16. The another case of **Yoginath Bagde Vs. State of Maharashtra and another**, { (1999) 7 SCC 739} , the Supreme Court after considering the earlier decisions held as under :-

> "51.....The law is well settled that if the findings are perverse and are not supported by evidence on record or the findings recorded at the domestic trial are such to which no reasonable person would have reached, it would be open to the High Court as also to this Court to interfere in the

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matter. In Kuldeep v. Commr. of Police this Court, relying upon the earlier decisions in Nand Kishore Prasad v. State of Bihar, State of Andhra Pradesh v. Rama Rao, Central Bank of India Ltd. v. Prakash Chand Jain, Bharat Iron Works v. Bhagubhai Balubhai Patel as also Rajinder Kumar Kindra v. Delhi Admn. laid down that although the court cannot sit in appeal over the findings recorded by the disciplinary authority or the enquiry officer in a departmental enquiry, it does not mean that in no circumstance can the court interfere. It was observed that the power of judicial review available to a High Court as also to this Court under the Constitution takes in its stride the domestic enquiry as well and the courts can interfere with the conclusions reached therein if there was no evidence to support the findings or the findings recorded were such as could not have been reached by an ordinary prudent man or the findings were perverse".

17. In case of **B.C. Chaturvedi Vs. Union of India and others** {(1995) 6 SCC 749} held as under:-

> "12. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the Court. When an enquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held

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by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to reappreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case".

18. In another latest decision, the Supreme Court in **V. Ramana Vs. A.P. SRTC and others** { (2005) 7 SCC 338 } held as under :-

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"11. The common thread running through in all these decisions is that the court should not interfere with the administrator's decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the court, in the sense that it was in defiance of logic or moral standards. In view of what has been stated in Wednesbury case the court would not go into the correctness of the choice made by the administrator open to him and the court should not substitute its decision for that of the administrator. The scope of judicial review is limited to the deficiency in decision-making process and not the decision".

19. In the present case the allegations have been established on the basis of sufficient evidences which a reasonable person, acting reasonably and with objectivity may arrive at a finding of holding the charges against the delinquent officer. I have not found that any charge has been proved on the basis of no evidence or unreliable evidence or mere conjunctures and surmises.

20. In the facts and circumstances of the case and applying the well settled principles of law laid down by the Supreme Court in various decisions cited above, it does not warrant interference with the findings recorded by the enquiry officer and the penalty imposed by the disciplinary authority and upheld by the appellate authority, in the present proceeding.

21. In the result, the petition fails and is dismissed. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge